

THOMAS F. STROOCK

IBLA 82-610

Decided November 15, 1983

Appeal from a decision of Utah State Office, Bureau of Land Management, requiring certain stipulations prior to execution of oil and gas lease U-47960.

Affirmed in part; set aside and remanded in part.

1. Act of October 1, 1968--Mineral Leasing Act: Consent of Agency--Mineral Leasing Act for Acquired Lands: Consent of Agency--Oil and Gas Leases: Acquired Lands Leases--Oil and Gas Leases: Consent of Agency--Oil and Gas Leases: Discretion to Lease--Oil and Gas Leases: Stipulations

The Act establishing the Flaming Gorge National Recreation Area requires that any oil and gas lease or permit be issued only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe. 16 U.S.C. § 460v-4 (1976). Where BLM conditions the grant of a lease upon stipulations required by the Forest Service, the Department of the Interior has no authority to waive compliance with the Act.

APPEARANCES: Phillip Wm. Lear Esq., and Kate Lahey, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Thomas F. Stroock appeals from a decision of the Utah State Office, Bureau of Land Management (BLM), dated February 26, 1982, which required him to accept certain stipulations before execution of oil and gas lease U-47960.

Appellant filed a noncompetitive lease offer for 2,287.06 acres in secs. 18, 19, 29, and 30, T. 3 N., R. 22 E., Salt Lake meridian, Daggett County, Utah. All lands sought by appellant are within the Flaming Gorge National Recreation Area (NRA) and the Ashley National Forest except lots 1 and 2, E 1/2 NW 1/4, and E 1/2 sec. 29.

The stipulations required by BLM are as follows:

[1.] No occupancy or other activity on the surface of the following described lands is allowed under this lease.

T. 3 N., R. 22 E., Salt Lake meridian, Utah
 Sec. 18, lots 1-4, 6, SE 1/4 SW 1/4, S 1/2 SE 1/4;
 Sec. 19, lot 1, N 1/2 NE 1/4, NE 1/4 NW 1/4;
 Sec. 29, lots 3, 4;
 Sec. 30, lots 4-8, SW 1/4 NE 1/4, SE 1/4 SW 1/4.

No occupancy or other surface disturbance will be allowed on slopes in excess of 35 percent located in lot 5, NE 1/4 SW 1/4, N 1/2 SE 1/4 sec. 18; lots 2, 3, 4, S 1/2 NE 1/4, SE 1/4 NW 1/4, E 1/2 SW 1/4, SE 1/4 sec. 19; lots 1-3, NW 1/4 NE 1/4, E 1/2 NW 1/4, NE 1/4 SW 1/4, NW 1/4 SE 1/4 sec. 30, T. 3 N., R. 22 E., SLM, Utah, without written permission from the District Oil and Gas Supervisor, Minerals Management Service, with the concurrence of the authorized officer of the Federal surface management agency.

[2.] No occupancy or other surface disturbance will be allowed within 1,300 feet of the highway located in lots 1, 2, NE 1/4, E 1/2 NW 1/4 sec. 29, T. 3 N., R. 22 E., SLM, Utah. This distance may be modified when specifically approved in writing by the District Oil and Gas Supervisor, Minerals Management Service, with the concurrence of the District Manager, Bureau of Land Management.

In order to protect important seasonal wildlife habitat, exploration, drilling, and other development activity in the SE 1/4 sec. 29, T. 3 N., R. 22 E., SLM, Utah, will be allowed only during the period from July 20 to May 15. This limitation does not apply to maintenance and operation of producing wells. Exceptions to this limitation in any year may be specifically authorized in writing by the District Oil and Gas Supervisor, Minerals Management Service, with the concurrence of the District Manager, Bureau of Land Management.

A letter, dated March 12, 1982, from the Forest Service to BLM states: 1/

This is in followup to our recent telephone report regarding oil and gas lease offer U-47960 (which was filed over withdrawn offer U-23667). We have no objection to the issuance of U-47960 providing the stipulations cited below are made a part of the lease.

U-47960
 T. 3 N., R. 22 E., Salt Lake Meridian

1/ Appellant's notice of appeal is dated Mar. 11, 1982, 1 day prior to this letter. Comments in his statement of reasons suggest appellant never examined this letter and, as a result, may have been confused by prior correspondence addressing a prior offer U-23667.

Sec. 18, lots 1-4; - no surface occupancy, overly steep slopes

Sec. 18, lot 5, NE 1/4 of lot 6, NE 1/4 SW 1/4,

N 1/2 SE 1/4;) Stipulation

Sec. 19, lots 2-4, SE 1/4 NW 1/4, E 1/2 SW 1/4,) No. 6

S 1/2 SE 1/4;) 35% slopes

Sec. 29, E 1/2 SW 1/4)

Sec. 30, lots 1, 2, 3, NW 1/4 NE 1/4, E 1/2 NW 1/4,)

NE 1/4 SW 1/4, NW 1/4 SE 1/4;)

Sec. 18, W 1/2 and SE 1/4 of lot 6, SE 1/4 SW 1/4,)

S 1/2 SE 1/4;) no surface

Sec. 19, lot 1, NE 1/4 NW 1/4, N 1/2 NE 1/4;) occupancy,

Sec. 29, lots 3, 4;) visual

Sec. 30, lots 4, 5, 6, 7, 8, SW 1/4 NE 1/4,) retention

SE 1/4 SW 1/4, SW 1/4 SE 1/4;) zone

Sec. 29, lots 1, 2, E 1/2 NW 1/4, E 1/2. - outside National Forest boundary

Directional drilling will be allowed from outside those areas where occupancy is restricted or denied.

Our recommendations are based on environmental analysis reports and land Gorge National Recreation Area. We do not believe an environmental statement is needed at this time.

On appeal, appellant contends that the stipulations required by BLM are unreasonably stringent. He points out that he is paying for leasehold rights which he cannot enjoy; that he is not given a reason for the stipulations; that the stipulations are inconsistent with one another; that the leased lands are a considerable distance from the Flaming Gorge Reservoir; and that the lands are similarly distant from developed camping and recreational areas in the Flaming Gorge NRA. He finally asserts that to impose no surface occupancy stipulations without first determining whether less stringent alternatives are available is arbitrary and capricious.

In resolving this appeal, it is important to distinguish between those lands sought by appellant within the Flaming Gorge NRA and those lands outside its boundaries. ^{2/} The Flaming Gorge NRA was established in 1968 by legislation set forth at 16 U.S.C. § 460v through 460v-8 (1976). The relevant portions of this statute provide:

In order to provide, in furtherance of the purposes of the Colorado River storage project, for the public outdoor recreation use and enjoyment of the Flaming Gorge Reservoir and surrounding

^{2/} All lands in the Flaming Gorge NRA are part of the Ashley National Forest. 16 U.S.C. § 460v-5 (1976).

lands in the States of Utah and Wyoming and the conservation of scenic, scientific, historic, and other values contributing to public enjoyment of such lands and waters, there is hereby established, subject to valid existing rights, the Flaming Gorge National Recreation Area in the States of Utah and Wyoming (hereinafter referred to as the "recreation area"). * * *

* * * * *

* * * The administration, protection, and development of the recreation area shall be by the Secretary of Agriculture (hereinafter called the "Secretary") in accordance with the laws, rules, and regulations applicable to national forests, in a manner coordinated with the other purposes of the Colorado River storage project, and in such manner as in his judgment will best provide for (1) public outdoor recreation benefits; (2) conservation of scenic, scientific, historic, and other values contributing to public enjoyment; and (3) such management, utilization, and disposal of natural resources as in his judgment will promote or are compatible with, and do not significantly impair the purposes for which the recreation area is established: Provided, That lands or waters needed or used for the operation of the Colorado River storage project shall continue to be administered by the Secretary of the Interior to the extent he determines to be required for such operation.

* * * * *

* * * The lands within the recreation area, subject to valid existing rights, are hereby withdrawn from location, entry, and patent under the United States mining laws. The Secretary of the Interior, under such regulations as he deems appropriate, may permit the removal of the nonleasable minerals from lands or interests in lands within the recreation area in the manner prescribed by section 10 of the Act of August 4, 1939, as amended (53 Stat. 1196; 43 U.S.C. 387), and he may permit the removal of leasable minerals from lands or interests in lands within the recreation area in accordance with the Mineral Leasing Act of February 24, 1920, as amended (30 U.S.C. 181 et seq.), or the Acquired Lands Mineral Leasing Act of August 7, 1947 (30 U.S.C. 351 et seq.), if he finds that such disposition would not have significantly adverse effects on the purposes of the Colorado River storage project and the Secretary of Agriculture finds that such disposition would not have significant adverse effects on the purposes of the recreation area: Provided, That any lease or permit respecting such minerals in the recreation area shall be issued only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe. [Emphasis supplied.]

The underscored concluding proviso to this legislation removes this case from the great bulk of cases involving oil and gas lease stipulations.

Typically, this Board has held that where public domain land is administered by another agency, such as the Department of Agriculture in the instant case, BLM should properly consider the recommendations of that agency regarding lease issuance or imposition of stipulations. However, this does not relieve BLM of the need to make an independent determination supported by the record of whether and under what conditions a lease may issue in the public interest. National Gas Corp., 59 IBLA 348 (1981). The recommendations of the Forest Service are not conclusive, we have held, in determining whether a lease should issue. Chevron Oil Co., 24 IBLA 159 (1976); Stanley M. Edwards, 24 IBLA 12 (1976).

[1] In the instant case, however, by statute, an oil and gas lease in the Flaming Gorge NRA may be issued only with the consent of the Secretary of Agriculture and subject to such conditions as he may prescribe. 16 U.S.C. § 460v-4 (1976). The instant case is thus analogous to those cases involving the leasing of acquired lands. Leasing of acquired lands is governed by the Mineral Leasing Act for Acquired Lands, 30 U.S.C. §§ 351-359 (Supp. V 1981). Section 352 of that Act provides in part:

No mineral deposit covered by this section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit * * * and subject to such conditions as that official may prescribe to insure the adequate utilization of the lands for the primary purposes for which they have been acquired or are being administered. [Emphasis supplied.]

In Amoco Production Co., 69 IBLA 279 (1982) (Administrative Judge Irwin dissenting), this Board held that the Department of the Interior has no authority to waive compliance with a statute that requires the consent of an official outside the Department to lease lands for oil and gas and that subjects a lease to such conditions as that official may prescribe. In Amoco, the Tennessee Valley Authority (TVA) withheld its consent to lease acquired lands under its jurisdiction unless the potential lessee established that the lands sought were necessary to constitute a drilling unit. Without examining the substance of TVA's conditions, this Board held that the Department of the Interior could not waive compliance with such a condition regardless of the wisdom of such condition in the Board's view.

Amoco, although involving the Mineral Leasing Act for Acquired Lands, is persuasive authority for affirming BLM's decision as to those lands sought by appellant in the NRA. Under both the Mineral Leasing Act for Acquired Lands and the legislation establishing the Flaming Gorge NRA, an agency outside of the Department of the Interior is required to consent to issuance of a lease and is authorized to condition its issuance. It is thus inappropriate to regard the agency's consent and conditions as recommendations whose wisdom this Department may question. Amoco Production Co., supra at 282. But see Stanley M. Edwards, supra at 20-21, where the agency acted inconsistently with its delegation of authority.

Newly published regulations at 48 FR 33648 (July 22, 1983) are consistent with our discussion above. At page 33666, regulation 43 CFR 3101.7-4 provides: 3/

§ 3101.7-4 Action by the Bureau of Land Management.

(a) Where the surface managing agency has consented to leasing with required stipulations, and the Secretary decides to issue a lease, the authorized officer shall incorporate the stipulations into any lease which it may issue. The authorized officer may add additional stipulations.

(b) The authorized officer shall not issue a lease and shall reject any lease offer on lands for which the surface managing agency withholds consent required by statute. In all other instances, the Secretary has the final authority and discretion to decide to issue a lease.

(c) The authorized officer shall review all recommendations and shall accept all reasonable recommendations of the surface managing agency.

Further recourse to appellant is suggested by 43 CFR 3101.7-5 (48 FR 33648 (July 22, 1983)):

§ 3101.7-5 Appeals.

(a) The decision of the authorized officer to reject an offer to lease or to issue a lease with special stipulations recommended by the surface managing agency may be appealed to the Interior Board of Land Appeals under part 4 of this title.

(b) Where the surface managing agency has required that special stipulations be included in a lease or has refused to consent to leasing, an affected lease offeror may pursue the administrative remedies provided by the particular surface managing agency.

3/ Comments regarding section 3101.7 are found at 48 FR 33651 (July 22, 1983). These comments are set forth in full:

"Section 3101.7 Federal Lands Administered by an agency outside of the Department of the Interior.

"Many comments suggested that the surface management agency be required to provide justification and rational [sic] for no-leasing decisions and special stipulations. Reasons for refusal to consent to lease acquired lands cannot be required of the surface management agency by the Department of the Interior. The Mineral Leasing Act for Acquired Lands does not provide for such a requirement. The surface management agency is an adverse party to any decision rendered by the Department to reject an offer because of a refusal to consent to lease, and an appeal to the surface management agency is neither required nor necessary to exhaust administrative remedies within the Department."

BLM's decision of February 26, 1982, the subject of this appeal, also addressed lands sought by appellant in sec. 29 outside the Flaming Gorge NRA and the Ashley National Forest. Specifically, BLM conditioned lease issuance in lots 1 and 2, NE 1/4, E 1/2 NW 1/4 sec. 29, by a stipulation prohibiting occupancy or other surface disturbance within 1,300 feet of the highway located therein. The stipulation provided that this distance may be modified upon approval by the Minerals Management Service with the concurrence of BLM.

Appellant states that in the adjacent sec. 30, which allegedly contains similar terrain although administered by the Department of Agriculture, the Forest Service stipulation would only limit surface occupancy within 500 feet of the highway. The record does not disclose any reason for this disparity, nor does it disclose that BLM considered a less stringent alternative to its choice of stipulations. ^{4/} The Board will affirm a BLM decision rejecting an offer or requiring execution of a no-surface occupancy stipulation where the record identifies the resource to be protected and explains why less stringent alternatives would be insufficient to do so. James M. Chudnow, 70 IBLA 225 (1983). Because the record is inadequate to adjudicate the propriety of BLM's stipulation requiring a 1,300-foot setback from the highway in sec. 29, we set aside this portion of the case and remand the case file to BLM for its reconsideration. This action by the Board does not preclude BLM from again requiring this stipulation upon its preparation of a record in support thereof. ^{5/}

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is affirmed in part and set aside and remanded in part.

Anne Poindexter Lewis
Administrative Judge

We concur:

Gail M. Frazier
Administrative Judge

Douglas E. Henriques
Administrative Judge

^{4/} The record does contain excerpts from BLM's environmental analysis record, oil and gas leasing program, for Vernal District, Utah (revised Feb. 1976). At page IV-100, it identifies U.S. Highway 40, SR 44, and the road to Rainbow Park as scenic highways that should be protected by the type of stipulation employed herein.

^{5/} Appellant's statement of reasons is virtually silent as to BLM's stipulation restricting exploration, drilling, and other development activity in SE 1/4 sec. 29 during the period from May 15 to July 20 in aid of seasonal wildlife habitats. In the absence of specific objection to this stipulation, we will not disturb it.

February 9, 1984

IBLA 82-610 : U-47960
:
THOMAS F. STROOCK : Oil and Gas
77 IBLA 137 (1983) :
: Petition for Reconsideration
: Granted; Decision Vacated

ORDER

On November 15, 1983, this Board affirmed in part and set aside and remanded in part a decision of the Utah State Office, Bureau of Land Management (BLM), dated February 26, 1982. Thomas F. Stroock, 77 IBLA 137 (1983). BLM's decision required appellant to accept certain stipulations before execution of oil and gas lease U-47960.

Appellant seeks reconsideration of the Board's decision, contending that he was unaware of a certain letter, dated March 12, 1982, from the U.S. Forest Service to BLM, relied upon by the Board in its decision. Appellant asks that he be permitted to file an amended statement of reasons addressing this letter. In the event that the Board grants his request for reconsideration, appellant further requests that the Board grant a stay of the 90-day time limit imposed on appeals to the United States District Court in Utah. 30 U.S.C. 226-2 (1976).

Regulation 43 CFR 4.21(c) authorizes the Board to grant reconsideration of a decision only in extraordinary circumstances where, in the judgment of the Board or Director, sufficient reason appears therefor. The filing and pendency of a request for reconsideration shall not operate to stay the effectiveness of the decision involved unless so ordered by the Board or Director. Id.

The petition for reconsideration is hereby granted, and the Board's decision of November 15, 1983, is vacated. Appellant is granted 30 days from receipt of this Order to file an amended statement of reasons. In view of our determination herein, it is unnecessary to rule on the request for a stay of the 90-day time limit for an appeal to court. By granting reconsideration, there is now no final Departmental decision subject to judicial review.

Anne Poindexter Lewis
Administrative Judge

77 IBLA 143A

We concur:

Wm. Philip Horton
Chief Administrative Judge

Gail M. Frazier
Administrative Judge

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